

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STOLT-NIELSEN TRANSPORTATION GROUP LTD.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-2217 (RJL)
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	
)	
STOLT-NIELSEN TRANSPORTATION GROUP LTD.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-0474 (RJL)
)	
UNITED STATES DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between plaintiff Stolt-Nielsen Transportation Group Ltd. (“Stolt-Nielsen” or “plaintiff”) and defendants the United States of America and the United States Department of Justice (the “Government” or “defendants”), this 26th day of January, 2009.

WHEREAS, the Corporate Leniency Policy of the Department of Justice’s Antitrust Division provides amnesty for the first company in a cartel that comes forward, admits its participation in a cartel, fully cooperates with the Antitrust Division’s investigation of other corporate and individual conspirators, and meets the other stated requirements of the policy. A company’s agreement to the terms and conditions of the leniency program is reflected in an

amnesty (leniency) letter which corporate representatives sign with the Antitrust Division. The Antitrust Division represents that confidentiality is essential to the success of the amnesty program, and that amnesty negotiations are conducted and amnesty letters are executed on a confidential basis to protect the identities of corporate and individual participants and the information provided by these confidential sources.

WHEREAS, in its complaints, plaintiff sought, inter alia, the release under FOIA of amnesty letters entered into by the Antitrust Division between August 1993, when its Corporate Leniency Policy was adopted, and October 14, 2005, when plaintiff's FOIA request was initiated. The FOIA request stated: "In an effort to expedite response to this matter and protect any arguably confidential information regarding the identity of the companies or individuals, SNTG [Stolt-Nielsen Transportation Group] will accept such documents with the names and identities of the relevant companies or individuals redacted." Over the course of the litigation, Stolt-Nielsen agreed to allow the Antitrust Division to redact the proper names of agreement signatories, the proper names of any natural persons, the names of any specific corporations, the proper names of grand jury subjects and witnesses, the names of the specific industry involved in the investigation, all references to specific dates, including the dates of the amnesty agreements, and any identifying information as to the judicial district where the investigation is pending or was conducted. Stolt-Nielsen also agreed to a batch release of the amnesty agreements, such that the agreements would be released in random, rather than chronological order, and without the initial identifying document Bates numbers. Stolt-Nielsen's request for amnesty agreements did not seek information for an amnesty agreement in a specific industry or a specific amnesty applicant, but rather for a batch of agreements.

WHEREAS, on the issue of whether the amnesty letters were exempt from disclosure under FOIA, the United States Court of Appeals for the District of Columbia Circuit held that “[t]he only exemptions possibly applicable to the amnesty agreements are those created by subsection (b)(7) of FOIA, specifically Exemptions 7(A) and 7(D),” in that records or information compiled for law enforcement purposes were exempt from disclosure under FOIA Exemption 7(A), to the extent that production could reasonably be expected to interfere with enforcement proceedings, and under FOIA Exemption 7(D), to the extent that production could reasonably be expected to disclose the identity of a confidential source, or information furnished by the confidential source, in the course of a criminal investigation. Stolt-Nielsen Transportation Group Ltd. v. United States, 534 F.3d 728, 733 (D.C. Cir. 2008).

WHEREAS, the United States Court of Appeals for the District of Columbia Circuit stated: “It does appear that the names of amnesty applicants are present and perhaps other information contained in the agreement could identify amnesty applicants and information they furnished as confidential sources and that the government might lawfully withhold that information,” and that “FOIA further provides that ‘[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under’ the subsection setting forth the exemption.” Id.

WHEREAS, the United States Court of Appeals for the District of Columbia Circuit vacated the judgment of this Court and remanded the matter to this Court “for further proceedings to establish the feasibility of the release of redacted versions of the amnesty agreements, . . . to establish what portions of the amnesty agreements must be released under FOIA.” Id. at 730, 731-32.

WHEREAS, following the decision of the United States Court of Appeals for the District of Columbia Circuit, from November 2008 to January 2009, counsel for Stolt-Nielsen and counsel for the Government, in conjunction with representatives of the Antitrust Division of the Department of Justice, have met repeatedly in good faith to discuss the settlement of these actions, including the issue of attorney's fees and costs.

WHEREAS, in the course of these settlement negotiations, the Antitrust Division submitted for review by Stolt-Nielsen:

a. A draft declaration by Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement of the Antitrust Division, which described the leniency program and its importance to the Antitrust Division's Corporate Leniency Policy to effective and efficient law enforcement, and the importance of preserving the confidentiality of the program under FOIA to protect the confidential sources and information provided by the sources contained in the amnesty agreements;

b. A draft declaration by Sue Ann Slates, Chief, FOIA/Privacy Act Unit, Antitrust Division, which described and explained the rationale for six categories of redactions applied to the amnesty letters in compliance with Exemption 7(D), to protect the confidentiality of the sources and information provided by the sources contained in the amnesty letters;

c. A Vaughn Index, identifying the basis for each redaction by category in each individual amnesty letter; and

d. A redacted copy of each amnesty letter, which contained the initial identifying document Bates number for reference to the Vaughn Index. These 100 amnesty letters numbered 373 pages in total. The final agreed, redacted versions of these 100 agreements to be produced in these actions to Stolt-Nielsen were reviewed by counsel for Stolt-Nielsen.

NOW, THEREFORE, the parties in the above-captioned actions, having agreed upon the release of certain documents (100 amnesty letters) with redactions in their texts in conformity with the provisions of the Freedom of Information Act (“FOIA”), codified at 5 U.S.C. § 552, hereby stipulate and agree as follows:

1. The Antitrust Division hereby certifies in good faith that in its opinion and judgment the redactions in the 100 redacted amnesty letters constitute necessary and appropriate deletions in compliance with FOIA Exemptions 7(A) and 7(D), with reasonable, detailed justifications for the redactions, specifically identifying the reasons why each particular exemption is necessary and relevant for the protection of the assurances of confidentiality, correlated with the particular redactions in each document, to protect confidentiality in law enforcement proceedings and to prevent breach of the assurances of confidentiality attendant on each amnesty letter, reasonably calculated to avoid disclosure of the confidential sources and the information furnished by the sources.

2. The Antitrust Division hereby certifies that the redacted amnesty letters it will produce to Stolt-Nielsen contain exactly the same redactions as those in the final, redacted amnesty letters reviewed by counsel for Stolt-Nielsen in the FOIA office of the Antitrust Division, during the settlement meetings, up to and including the meeting on January 14, 2009.

3. The Antitrust Division represents that each of the redactions identified in the list of categories of redactions, Attachment 1, is necessary and in conformity with FOIA, and that there is no other “reasonably segregable” information available for release under FOIA.

4. The Antitrust Division represents that the portions of the text identified in the Vaughn Index are directly related to ongoing law enforcement investigations, the disclosure of which

could reasonably be expected to interfere with continuing law enforcement proceedings, and are properly subject to Exemption 7(A). Stolt-Nielsen, 534 F.3d at 733.

5. The Antitrust Division also represents that each category of redactions, viz., names, titles, and other personal and corporate identifiers; dates and temporal information; industries; miscellaneous identifiers and/or confidential source provided information not specified elsewhere; geographic location identifiers; and specific cartel conduct/type of offense descriptions; and examples of information under each category, are lawful and necessary in compliance with Exemption 7(D) to protect the confidentiality of sources and information furnished by the sources to the agency from ascertainment by persons with expert knowledge of antitrust proceedings. Stolt-Nielsen, 534 F.3d at 734.

6. Nothing in this Agreement shall be construed as any agreement or admission by Stolt-Nielsen that Exemptions 7(A) and 7(D) apply to each redaction in the final, redacted amnesty agreements. Stolt-Nielsen acknowledges that the Antitrust Division has presented detailed justifications for the redactions. Having reviewed the Antitrust Division's declarations, exhibits, and the Vaughn Index, for the purpose of this settlement, Stolt-Nielsen is not seeking to have the Court inspect in camera copies of the unredacted amnesty letters, disclosing the individual redactions made on each amnesty letter.

7. Within seven business days after the effective date of the voluntary dismissal of these actions, the Antitrust Division will provide Stolt-Nielsen with a copy of each of the 100 amnesty letters that are the subject of these actions in the final, redacted version, as shown to counsel for Stolt-Nielsen. The final, redacted versions of the 100 amnesty agreements being produced to Stolt-Nielsen are produced exactly in the manner provided to counsel for Stolt-Nielsen, during negotiations up to and including, January 14, 2009. The Antitrust Division will furnish these

letters in random order, not in chronological order, and without the initial identifying document Bates numbers.

8. As soon as practicable after the effective date of the voluntary dismissal of these actions, the Government will pay White & Case LLP, as counsel for Stolt-Nielsen, the sum of \$40,000.00, which in conjunction with the \$975.10 already paid, is in full settlement and satisfaction under FOIA of any and all claims by Stolt-Nielsen for attorney's fees and costs arising out of any and all phases of this litigation. The Government will utilize its best efforts to ensure payment of the \$40,000 settlement amount, by check made payable to "White & Case LLP," Tax Identification Number [REDACTED] sent in care of J. Mark Gidley, White & Case LLP, 701 Thirteenth St., N.W., Washington, D.C. 20005, in a timely manner and as soon as practicable.

9. Without conceding that it is not entitled to administrative review and processing fees under FOIA, for purposes of effectuating this settlement the Government agrees that the Antitrust Division will waive its rights under FOIA and will not charge Stolt-Nielsen any further fees for administrative review and processing of Stolt-Nielsen's FOIA requests beyond those heretofore assessed.

10. The parties agree that this Agreement will resolve all remaining matters upon which these actions are brought, and that there are no other remaining issues of fact or law which may require further proceedings before the Court, except that the Court shall retain jurisdiction for the sole purpose of enforcing the provisions of the Agreement.

11. Upon the effective date of this Agreement, and conditioned upon the Government's full compliance with its obligations under this Agreement, Stolt-Nielsen releases and forever discharges defendants and any department, agency, or establishment thereof, and any officers,

employees, agents, successors of any such department, agency, or establishment thereof, from the FOIA causes of action that Stolt-Nielsen asserts in this litigation.

12. The parties acknowledge that this Agreement is entered into solely for the purpose of settling and compromising the remaining claims in these actions without further litigation, and shall not be construed as any admission by any party of the truth of any allegation or the validity of any claim asserted in these actions. This Agreement is also not to be construed as a concession or admission of any fault or omission in any act or failure to act.

13. The parties to this Agreement agree that nothing contained herein shall be construed to impose upon any party any duty, obligation, or requirement, the performance of which would be inconsistent with federal law or governmental rules or regulations at the time of such performance. The Government represents that it is currently unaware of any federal law or governmental rule or regulation that is inconsistent with the full performance of this Agreement.

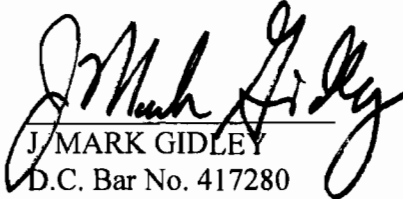
14. The Antitrust Division certifies that the six categories of redactions made in this case were possible only because the FOIA request sought a batch of amnesty agreements large enough to mitigate the Antitrust Division's concerns that individual amnesty applicants could be identified and confidential information could be disclosed, even with redactions. Therefore, the redaction of amnesty agreements under this Agreement applies only to the batch request at issue in these actions. For pending and future targeted FOIA requests for amnesty agreements, nothing in this Agreement prohibits the Antitrust Division from invoking FOIA Exemptions 7(A) and 7(D) or a Glomar response, in which the Antitrust Division may neither confirm nor deny the existence of specific amnesty agreements, to withhold amnesty agreements in their entirety.

15. Nothing in this Agreement shall limit Stolt-Nielsen or its counsel from making future FOIA requests.


16. The parties to this Agreement agree that nothing in this Agreement shall abridge or nullify the authority of the Congress to enact legislation, or the authority of the Department of Justice to promulgate, revise, or amend its regulations and to prescribe, govern, or modify its procedures by appropriate administrative proceedings, for the processing of FOIA requests by any person for agency records.

17. The terms of this Agreement constitute the entire Agreement of the parties, and no statement, remark, agreement, or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

18. This Agreement is binding upon the parties and their successors, assigns, representatives, and trustees, and shall become final and effective upon the entry of the Order of the Court on the Stipulation and Order of Dismissal with Prejudice in the above-captioned actions, fully executed by all signatories and entered on the court's dockets.



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United States Department of Justice

January 26, 2009

ATTACHMENT 1

LIST OF SIX CATEGORIES OF CONFIDENTIAL INFORMATION IN AMNESTY AGREEMENTS AND EXAMPLES OF TYPES OF INFORMATION REDACTED UNDER EACH CATEGORY:

(1) Names, Titles, and Other Personal & Corporate Identifiers

- names and titles of individual applicants, current and former officers, directors, board members, employees, ATR DAAGs, attorneys, and staff
- names of co-conspirators, client(s), outside and in-house counsel, law firms, all signatories to the agreement and position titles, parties not obligated to cooperate in an investigation, grand jury witnesses and forepersons, counsel for amnesty applicants and witnesses in grand jury investigations
- words, nouns, and personal pronouns, indicating a person's gender, nationality, citizenship, country of origin, and familial relationships
- names of corporate applicants, parent corporations, predecessor corporations, subsidiaries, majority owned subsidiaries, corporate and agency affiliates, joint ventures, partners, a/k/a, f/k/a, d/b/a, third parties, court case names, companies with which an amnesty applicant has business relations, third parties with licensing agreements, and foreign entities
- personal and corporate names of subjects and targets of grand jury investigations and grand jury subpoena recipients

(2) Dates and Temporal Information

- all dates, except for August 10, 1993 and August 10, 1994, Antitrust Division's policies on corporate and individual leniency letters
- dates of agreements
- dates the agreements were signed by all parties (signatures may be on different dates)
- date received stamps
- dates that meetings took place
- dates in fax transmission lines
- dates that violations occurred
- dates specific to the investigation
- the timeframe of the investigation
- specific dates that restitution for damages is to be paid

- dates as of which named employees no longer work at corporation
- dates specific to the offense, including examples such as:
 - offense was committed prior to a certain date
 - the date range of the violation
 - the dates the cartel conduct is covered by the amnesty agreement
 - applicant had knowledge of the cartel activity prior to a certain date
- names of ATR personnel are temporal indicators
- former DAAG reveals that the agreement was signed during the period that DAAG held the position at the Department
- portion of the letterhead that indicates the amnesty agreement was signed by staff at particular ATR section or field office or by the DAAG on the DAAG's letterhead (DAAG started signing the letters in 1998)

(3) Industries

- names and descriptions of industries
- the role of the applicant in the industry
- contractors, sub-contractors, sellers, manufacturers, producers, importers, and exporters
- specific contracts and contract numbers
- specific markets and specific products
- licencing information

(4) Miscellaneous Identifiers and/or Confidential Source Provided Information Not Specified Elsewhere

- miscellaneous administrative markings, numbers, codes, handwritten notes, and file stamps placed on documents after execution with distinctive identifiers (e.g., names, dates, location of offices)
- grand jury exhibit stickers
- file drive paths
- ATR internal routing slips with initials and names of ATR staff
- DOJ file numbers assigned to specific investigations
- discussions and descriptions of applicants' cooperation in specific investigations
- names of other agencies involved in the investigation

(5) Geographic Location Identifiers

- portions of the letterhead that indicate which ATR office signed the agreement
- name of ATR's offices in Atlanta, Chicago, Cleveland, Dallas, New York, Philadelphia, San Francisco, and Washington, DC
- DAAG started signing the letters in 1998
- prior to 1998 the field office attorneys signed the letters on field office letterhead

This is a geographic clue as to which office handled the investigation and in which region of the United States

- all addresses, cities, states, and zip codes revealing locations of ATR offices and applicants' counsels
- all area codes, telephone and fax numbers, and fax tracking information
- references to judicial districts, court names, and docket numbers
- references to regions of United States
- references to regions within a state
- named metropolitan areas
- foreign countries
- places of business
- places where offenses occurred or were under investigation
- international markets
- worldwide foreign cartels
- domestic cartels
- branch offices
- country of residence
- specific types of foreign assistance requests
- in the United States (other than boilerplate language in agreement)

(6) Specific Cartel Conduct/Type of Offense Descriptions

- bid-rigging, bid rigging
- price fixing
- market allocation, market-share allocation
- territorial allocation
- volume allocation
- customer allocation, allocate customers
- collusion, collusive activity
- output restriction, restrict output
- capacity restriction
- descriptions of specific investigations
- references to plea agreements in other investigations
- amounts of restitution
- references to documents submitted in accordance with grand jury subpoenas
- information that would indicate relevant conduct or agreements (*e.g.*, bids, contracts) among co-conspirators, relating to the type of offense